



AGENDA ITEM
NO. 2

MEMORANDUM

To: PLANNING COMMISSION

Date: MAY 8, 2007

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: CONDITIONAL USE PERMIT APPLICATION, UP-07-01: E. DUNNE-HO

REQUEST

The applicant is requesting approval for a Conditional Use Permit (UP-07-01) to operate a 2056 square foot restaurant at E. Dunne Ave., Suite 140 in the Harvest Plaza Shopping Center. The project site is located at north side of East Dunne Ave. between Condit Ave. and Murphy Ave. in the Planned Unit Development zoning district (APN 728-17-023)

RECOMMENDATION

Environmental Assessment:	This action is categorically exempt from further environmental assessment under section 15301 of the California Environmental Quality Act.
Application, UP-07-01:	Adopt Resolution approving the conditional use permit
Processing Deadline:	October 15, 2007

SITE DESCRIPTION

Location:	1295 E. Dunne Ave., Suite 140
Site Area:	2.35 Acre
Zoning:	Planned Unit Development
General Plan:	Commercial

BACKGROUND

In 2003 the Council approved a precise development plan covering the development on the north side of E. Dunne Ave between Condit and Murphy. The PUD's "Planning Objective and Guidelines" list the following as permitted uses*:

1. Retail stores, excluding convenience markets
2. Offices
3. Sit down restaurants
4. Personal services

The following are listed as conditional uses*, **::

1. Animal care facilities
2. Sit down Restaurant
- 3 No more than five fast-food restaurants. Maximum of two on parcel number 728-17-023 & 728-17-017, and only one freestanding on parcel number 728-17-016.
4. Any other use which the Planning Commission determines to be similar to permitted or conditional uses.

* Inclusion of more than one of any kind of the permitted or conditional uses in the PUD shall be allowed only upon granting of a conditional use permit finding that the additional use 1) will not result in an over concentration of the type of use in the area and 2) will not preclude the establishment of other needed uses in the area.

** Inclusion of any of these conditional uses in the PUD shall be allowed only upon granting of a conditional use permit finding that the use will be consistent with the gateway and scenic corridor qualities of the PUD area. This finding shall include consideration of the quality of the proposed physical improvements to the site, the extent of outdoor activity on the site that will be visible from public rights of way and the manner in which the use is conducted on the site.

CASE ANALYSIS

The applicant is requesting a conditional use permit to allow for the operation of a 2056 square foot restaurant with approximately 40 seats. In the applicant's letter of justification, the applicant states that this will be a sit down restaurant. The hours of operation would be from 11 A.M. to 10 P.M. Monday through Sunday. Five to six employees will be on-site during business hours.

USE PERMIT FINDINGS

The required findings for a Conditional Use Permit are contained in Section 18.54.050 of the Municipal Code and read as follows:

- A. The site is suitable and adequate for the proposed use.**
- B. The proposed use and design would not have a substantial adverse effect on traffic circulation and on the planned capacity of the street system.**
- C. The proposed use at the location will not adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area, or impair the utility or value of property of other persons located in vicinity of site, or be detrimental to public health, safety or general welfare.**
- D. The design of the project is compatible with existing and proposed development within the district and its surroundings.**

PUD FINDINGS

- 1) The proposed use will not result on an over concentration of the type of use in the area; and**
- 2) The proposed use will not preclude the establishment of other needed uses in the area.**

Site Suitability:

The proposed restaurant would be located in Harvest Plaza shopping center located at north side of East Dunne Ave. between Condit Ave. and Murphy Ave. Harvest Plaza has total square footage of 30,190 sq. ft. Upstairs is 11,190 sq. ft. of office space with 19,000 sq. ft as down stair retail space.

At a ratio of 1 space per 300 sq. ft.; 11,190 sq. ft. of office requires 37 parking spaces. The 19,000 sq. ft. of retail requires 76 parking spaces based on 1 space per 250 sq. ft. ratio. The total parking spaces required for the building is 113. The building as constructed provides 123 parking spaces providing an excess of 13 spaces beyond the minimum required.

A 2,217 sq. ft. restaurant (UP 05-05) currently exists within the building which uses the 13 excess parking space. Other existing uses include two salons and up-stair offices. Proposed uses currently in plan check include 5,243 sq. ft. of retail use and a 2,341 sq. ft. coffee bar.

The parking ordinance requires restaurants be parked at a ratio of 1 space for every 100 sq. ft. of gross floor area. The proposed 2,056 sq. ft. restaurant use would require 21 parking spaces. As a 2,056 sq. ft. retail space it would require 8 parking spaces thus creating an additional demand for 13 additional parking spaces. The existing restaurant currently accounts for the 13 excess spaces provided for the building.

Peak use will occur during the lunch hour when all the uses will be operating. The City parking ordinance allows for the consideration of shared parking within commercial centers. Shared parking assumes multiple uses for a single vehicle trip. Since the second floor of the building is devoted to offices, it would be a reasonable expectation for some of the office users to patronize the restaurant uses in the center during the lunch hour. Employees and customers of other retail and service commercial uses may also patronize the restaurants within the center during the lunch hour.

Taking into consideration the shared parking, staff finds that the site is suitable and adequate for the additional restaurant use. Staff is recommending as a condition of approval that all other uses to locate within Harvest Plaza will need to meet the respective 1/250 sq. ft. retail parking requirement or the 1/300 sq. ft. office requirement.

Circulation:

Access to the site will be from either E. Dunne Ave., Condit Rd. or Murphy Road from the east. The proposed use is not proposing to alter the site circulation in any way and would not significantly increase traffic in the area therefore staff concludes that the proposed use would not have an adverse affect on area circulation.

General Welfare:

The proposed restaurant use is compatible with other existing and potential uses in the area. The property to the north is zoned residential and has yet to develop. The trash collection area is located approximately 60 ft. away from the northern property line. Food service uses do have the potential to create waste odor if trash collection does not occur frequently enough. As a condition of approval, staff is recommending that the applicant and building owner be responsible for regular waste pick-up at interval frequent enough to mitigate odor and overflow of the trash enclosure facility. The trash enclosure will also need to contain any grease or tallow drums related to the restaurant use. With adequate trash storage and frequent trash pick-up, the proposed restaurant should not have a substantial adverse effect on the general welfare of persons residing in the community.

Design:

The applicant will be doing only interior improvements to accommodate the restaurant. No exterior modifications are proposed so the design of the project will remain compatible with existing and proposed development within the district and its surroundings.

Over Concentration and Establishment of other uses:

The PUD requires that the proposed use will not result on an over concentration any type of use in the area. The overall PUD contains 14 spaces for in line shops. As mentioned earlier, another restaurant is currently located in the Harvest Plaza building and one other restaurant (Pizza Hut) located within the other building within the PUD. Other uses within the PUD (which are considered fast food) include, Taco Bell, Subway, Coffee Express and Sweet Retreat. Non food uses include King's Cleaners, Salon and Condit Dental. The PUD limits the number of fast food uses to five with further limitations on the number per parcel. Within the PUD, 3 out of the 14 shop spaces will be a restaurant (21%), 4 out of the 14 will be fast food (29 %) with the remaining 7 as retail or service commercial use (50%). The mix of uses at this time seems appropriate for the PUD's location and allows opportunity for a diversity of uses.

Consistency with the gateway and scenic corridor qualities of the PUD:

The proposed restaurant use and improvements will be interior only and is not proposing to alter the exterior of the building. Since no exterior use or physical changes are proposed, staff has determined that the proposed use would not affect the quality of the existing or proposed physical improvements or negatively affect the quality of the PUD.

RECOMMENDATION

Staff believes that the findings required for approval a conditional use permit can be made for the operation of restaurant. Staff recommends the adoption of the attached resolution approving conditional use permit application UP-07-01: E. Dunne-Ho.

Attachments:

1. Resolution
2. Letter of Justification and Statement of Operations
3. Vicinity Map

RESOLUTION NO.

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING A SIT-DOWN
RESTAURANT AT 1295 EAST DUNNE AVENUE SUITE 140
IN THE HARVEST PLAZA SHOPPING CENTER. (APN
728-17-023)**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of May 8, 2007, at which time the Planning Commission approved application UP-07-01: E. Dunne-Ho; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The approved project is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The approved conditional use has been found consistent with the criteria for conditional use permit approval contained in Section 18.54.050 of the Zoning Code.

SECTION 3. The conditional approval of a 2056 sq. ft. sit down restaurant will not result in an over concentration of the type of use in the area and will not preclude the establishment of other needed uses in the area.

SECTION 4. The restaurant use is consistent with the gateway and scenic corridor qualities of the PUD area and will not negatively affect other uses on-site.

SECTION 5. The project is categorically exempt from CEQA under Section 15301, existing facilities.

SECTION 6. The approved project shall be subject to the following conditions:

1. Use Approved. The Conditional Use Permit is approved solely for the operation of a 2056 sq. ft. restaurant in suite 140, of the Harvest Plaza building located at 1295 E. Dunne Ave. Any future expansions or intensification of the use shall be permitted only upon modification of this Conditional Use Permit approval or approval under a separate Use Permit Application.

2. Operation. The use shall be conducted as described in the Letter of Justification/Statement of Proposed Operations dated March 15, 2007 on file with the Community Development Department.
3. No additional sit down restaurant are allowed to locate within the Harvest Plaza shopping center. All future tenant spaces will need to meet the respective 1/250 sq. ft. retail parking requirement or the 1/300 sq. ft. office requirement.
4. The applicant and building owner will be responsible for regular waste pick-up at intervals frequent enough to mitigate odor and overflow of the on-site trash enclosure. The trash enclosure must also accommodate any grease or tallow drums related to the restaurant use. Outside storage of any grease or refuse will not be permitted.
5. The use permit approval granted under this Resolution shall remain in effect for twelve (12) months to May 8, 2008. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to the expiration date.
6. In accordance with Section 18.54.090 of the Municipal Code, the Community Development Department shall conduct an annual review of the approved use for compliance with the specified conditions. The Department may initiate corrective action as specified in the aforementioned Code Section if necessary to ensure compliance with said condition.
7. Submit two (2) signed copies of Approval Certificate/Resolution No. _____ to the Planning Division prior to issuance of building permit.
8. Restaurant and food preparation facilities shall install grease interceptors. The type, size and location of said interceptors shall be to the approval of the Public Works Director and the Pretreatment Office.
9. **IMPACT FEE INCREASE**-The City of Morgan Hill, pursuant to City code Chapter 3.56 has established ten specific categories of impact of fees to finance the cost of improvements required by new development. The City Council has chosen to implement certain fees, withhold implementation of certain fees, and stage the implementation of certain fees. City Code Chapter 3.56.050 provides for automatic annual (July 1) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. Those fees which a developer elects to defer shall be subject to the fees in effect at the time of development of a lot (issuance of building permit). The City Public Works Department maintains historical records on the Engineering New Record Index. These records are available for inspection during normal business hours.
10. Provide separate water services and meters for each suite/unit. This is to be installed by the developer.

**PASSED AND ADOPTED THIS 8th DAY OF MAY, 2007, AT A REGULAR MEETING
OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

A F F I D A V I T

I, _____, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

, Applicant

Date: _____

EXHIBIT "C"

LEGAL DESCRIPTION

MC -05-05: Monterey-Alcini

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

PARCEL ONE:

Parcel 1, as shown on that certain Parcel Map, which Parcel Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 7, 2000 in Book 731 of Maps, at pages 22 and 23.

PARCEL TWO:

Parcel 2, as shown on that certain Parcel Map, which Parcel Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 7, 2000 in Book 731 of Maps, at Pages 22 and 23.

APNS 817-01-062 & 063

MAR-15-2007 09:52 AM

INTEGRATED ARCHITECTURE

408 79 6414

P.01


INTEGRATED
ARCHITECTURE

Attn: Sheila
From: Todd Leal
779-7236

PLANNING DEPT.

MAR 15 2007

CITY OF MORGAN HILL

STATEMENT OF OPERATIONS

New Restaurant
Suite #140 at
Harvest plaza
1295 E. Dunne Ave
Morgan Hill, Ca 95037

To Whom It May Concern

The proposed restaurant is Vietnamese style cuisine served in a 2056 sq. ft. space with a 1300 sq. ft. sit down dining room with approximately 40 seats. The hours of operation shall be approximately from 11:00 am to 10:00 pm which means lunch and dinner crowds only. The number of employees working at this establishment will be approximately 6 at all times. If you have any questions please feel free to call me.

Thank you,

Todd Leal for
Jeffrey A. King, Architect
INTEGRATED ARCHITECTURE
17705 Hale Avenue, Suite F4
Morgan Hill, CA 95037
P: 408.779.9141
F: 408.779.6414



INTEGRATED
ARCHITECTURE

PLANNING DEPT.

MAR 15 2007

CITY OF MORGAN HILL

LETTER OF JUSTIFICATION

New Restaurant
Suite #140 at
Harvest plaza
1295 E. Dunne Ave
Morgan Hill, Ca 95037

To Whom It May Concern:

We are proposing a new Vietnamese restaurant at 1295 Harvest Plaza. This proposed restaurant we feel will only add to the list of fine cuisine available in the Morgan Hill area. The location of the restaurant should have no major impact on traffic circulation in the area or on the planned capacity of the street system. Parking for the restaurant shall not be an issue at 1295 Harvest Plaza because peak hours of the restaurant will be at lunch and in the evening. Tenant space at 1295 Harvest Plaza is still available meaning parking stall capacity has not been exceeded due to other tenant uses. In summary bringing this restaurant to Morgan Hill will only add yet another wonderful cultural experience to the city and its patrons. If you have any questions please feel free to call me.

Thank you,

Todd Leal for
Jeffrey A. King, Architect
INTEGRATED ARCHITECTURE
17705 Hale Avenue, Suite F4
Morgan Hill, CA 95037
P: 408.779.9141
F: 408.779.6414

UP-07-01: E DUNNE-HO



Project Site



City Limit

Not To Scale



CITY OF MORGAN HILL

Prepared by Community Development Department

VICINITY MAP

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